

ORIGINAL

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Before the  
COPYRIGHT ROYALTY TRIBUNAL  
Washington, D.C. 20036

In the Matter of  
1984 Cable Royalty  
Distribution Proceeding

CRT Docket No. 85-4-84CD

PHASE II STATEMENT OF THE NATIONAL ASSOCIATION OF BROADCASTERS  
REGARDING CLAIM OF WARNER COMMUNICATIONS, INC.

The National Association of Broadcasters (NAB) hereby submits its Phase II Direct Case Statement in the 1984 Cable Copyright Royalty Distribution Proceeding regarding the claim of Warner Communications, Inc. (Warner), which is seeking royalties as the copyright owner of the audio-visual portion of certain music videos.

NAB understands that Warner will be asserting its claim for royalties solely in the program supplier category.<sup>1/</sup> This is as

<sup>1/</sup> Because of this understanding, NAB is not presenting any direct evidence regarding Warner's claim. NAB will participate in the direct case hearings and will either present testimony and exhibits or designate portions of prior years' records in the rebuttal phase of this hearing, if necessary, to reply to any arguments that might be made that music videos should be treated as local programs for 1984.

it should be, since music videos fall squarely into the "Program Supplier" category.

Music videos are short programmatic material that are syndicated to many television stations. Donald E. Biederman, a Warner Brothers Music Vice President, testified in the 1983 Proceeding that Warner distributed its music videos to over fifty different television stations. 1983 Direct Testimony of Don Biederman at 14. Indeed, Mr. Biederman admitted that Warner's distribution of music videos "technically" constituted syndication, and drew an analogy between Warner's distribution of music videos and the syndication efforts of a major program syndicator like Viacom:

[I]f you have a station in Decatur, Alabama, and you want to have videos, and you write to Warner Brothers Records, TV Department, Can I have some videos, and we send them out with a license, I suppose that that analytically is the same as what Viacom does.

1983 Tr. 3544

Even where a music video program is produced by and broadcast by a single station, the program should be treated as syndicated and not local, particularly for 1984. Music videos themselves are not "produced by or for" a commercial television station, and these syndicated music videos are the major component of all music video programs.

In this fundamentally important way, music videos are the same as cartoon shows. Stations assemble syndicated cartoons and package them into their own cartoon programs, often with a local host or local live segments. Each program is thus unique, and the

identical show could not be broadcast on any other station, although many of the same syndicated cartoon segments themselves may appear on more than one station. These programs and their components have been classified by MPAA and the Tribunal in all prior proceedings as syndicated, and MPAA has continued to classify these cartoon programs as syndicated in 1984. 1984 Testimony of Marsha Kessler at 7; 1984 MPAA Exhibit 12. It would be illogical and arbitrary to treat music video programs differently.

It would be also exceedingly unfair, as well as destructive of the settlement process, for music video programs to be treated as falling within the Commercial Television category for 1984. Warner's claims have been based principally on the retransmission of the "Night Tracks" program appearing on WTBS. That program was expressly classified as a syndicated program by MPAA, and that undisputed classification was brought to the attention of the Tribunal, in the 1983 Phase I Proceeding. 1983 Tribunal Ex. No. 2; 1983 Tr. 3351-52. Indeed, the final witness to have appeared in the 1983 Phase I rebuttal hearings, Mr. Ross of WTBS, was to have listed all of the programs owned by WTBS that MPAA had classified as syndicated but which should have been classified as local. See Stipulations filed November 18, 1985; Tribunal Order dated February 11, 1986. "Night Tracks" was not among those programs. Thus, when the Tribunal made its Phase I allocation for 1983, it was absolutely clear that MPAA, NAB, WTBS, and all other parties considered the "Night Tracks" music video programs to be a part of the Program Suppliers' award, and not the Commercial

Television award.

NAB agreed to a settlement of the 1984 Phase I proceeding on the basis that the 1984 Commercial Television award would be identical to its 1983 award. It would destroy the basis for that settlement if the Tribunal were to require 1984 Commercial Television royalties to be paid for programs that were expressly covered by the Program Supplier category in 1983. The Tribunal has already agreed, in its Notice commencing the 1984 Proceeding, 51, Fed. Reg. 21587 (1986), to facilitate the 1984 Phase I settlement by assuring that the "syndicated" and "local" program categories would include the same types of programs for 1984 as they did for 1983. It would, to say the least, seriously impede future Phase I settlements if parties could never be certain that the owners of programs previously covered by other categories would not come knocking on their own program-category door in Phase II to collect royalties that were not included in their Phase I award.

Even if programs containing music videos could possibly be considered to be local programs in 1984, Warner is not entitled to receive royalties from the commercial television category. Music videos in that case would merely be elements of local programs. The Tribunal has already held that it does not award royalties directly to the copyright owners of program elements.

1978 Cable Royalty Distribution Determination, 45 Fed. Reg.

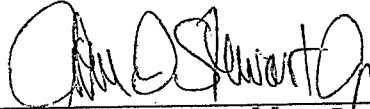
63,026, 63,033 (1980). If Warner is entitled to local program royalties, it must receive them from the copyright owners of the programs in which its music videos are a part, and not directly

from the Tribunal.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
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October 1, 1986

CERTIFICATE OF SERVICE

I, Jena Talarico, hereby certify that I have, on this 1st day of October, 1986, caused copies of the attached Phase II Statement of the National Association of Broadcasters Regarding Claim of Warner Communications, Inc. to be mailed, postage prepaid, to the following parties:

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October 1, 1986

BY HAND

The Honorable Edward W. Ray  
Chairman  
Copyright Royalty Tribunal  
1111 - 20th Street, N.W.  
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Dear Chairman Ray:

Transmitted herewith for filing with the Tribunal, on behalf of the National Association of Broadcasters, are an original and five copies of its Phase II Statement Regarding Claim of Warner Communications, Inc.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

  
Robert M. Halperin

Enclosures